

ORIGINAL

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

JANET FASHAKIN,

Plaintiff,

v.

RISK MANAGEMENT ALTERNATIVE
and NEXTEL COMMUNICATIONS,

Defendants.

Case No.

NOTICE OF REMOVAL
FILED **05** **1339**
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
MAR 11 2005
★ BROOKLYN OFFICE ★ **KORMAN, CH. J.**

Pursuant to 28 U.S.C. § 1441 *et seq.*, Defendant Risk Management Alternatives **GO, M.J.**
Inc. (improperly identified in the Notice with Summons as Risk Management Alternative)
("RMA"), by and through its counsel, hereby removes this action to the United States District
Court for the Eastern District of New York. As grounds for removal, RMA states:

1. By Summons with Notice dated January 31, 2005, Janet Fashakin commenced an action in the Civil Court of the City of New York, County of Queens, bearing Index No. 0011075, against defendants RMA and Nextel Communications, Inc. ("Nextel"), entitled *Janet Fashakin v. Risk Management Alternative and Nextel Communications*. A true and correct copy of the Summons with Notice is attached hereto as Exhibit A.

2. This case is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1331, and is an action in which RMA is entitled to remove to this Court pursuant to 28 U.S.C. § 1441 (a) and (b). By asserting that the claim arises from "unfair debt collection practices," Plaintiff asserts a federal claim against RMA under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* as there appears to be no similar cause of action under New York state law. *See Harary v. Blumenthal*, 555 F.2d 1113 (2d Cir. 1977)

(federal jurisdiction may be inferred from the facts plead in the complaint); *New York State Waterways Ass'n, Inc. v. Diamond*, 469 F.2d 419, 421 (2d Cir. 1972) (the court must read the complaint liberally to determine whether the facts set forth justify subject matter jurisdiction on grounds other than those most artistically pleaded); *Empire HealthChoice Assur., Inc. v. McVeigh*, 396 F.3d 136, 140 (2d Cir. 2005) (the district court has subject matter jurisdiction where it determines that the substance of the plaintiffs allegations raises a federal question). Similarly, by asserting that the claim arises from alleged "credit report[ing]" by RMA, Plaintiff asserts a federal claim under the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*

3. Venue is proper in this judicial district, pursuant to 28 U.S.C. § 1441(a), in that County of Queens, New York, where this action is now pending, is within this judicial district.

4. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b). RMA received the Summons with Notice via certified mail on February 11, 2005 with a postmark date of February 8, 2005. The Summons with Notice is the first document that RMA received that purported to set forth the claims for relief upon which this action is based. Accordingly, the filing of this Notice of Removal is within thirty (30) days of RMA's receipt of the Summons with Notice.


5. Nextel had no notice of the filing until our office supplied the Summons with Notice to Nextel via facsimile on March 1, 2005. According to Plaintiff's Affidavit of Service, Plaintiff's representative placed the Summons with Notice, addressed to Nextel, in the mail on February 7, 2005. *See* Defendant Nextel's Joinder in Removal, attached hereto as Exhibit B.

6. Defendant Nextel by and through its counsel, Kirk Salzman, Esq., has consented to RMA's removal of this action. See Exhibit B.

7. Contemporaneously with this filing, RMA has served copies of this Notice of Removal upon plaintiff Janet Fashakin, defendant Nextel and the Clerk of the Civil Court of the City of New York, County of Queens. A true and correct copy of the Notice of Filing of Notice of Removal filed in Civil Court of the City of New York, County of Queens is attached hereto as Exhibit C and incorporated herein.

WHEREFORE RMA gives notice that this action is removed from the Civil Court of the City of New York, County of Queens, to the United States District Court for the Eastern District of New York, for the exercise of jurisdiction over this action as though this action had originally been instituted in this Court.

PITNEY HARDIN LLP
Attorneys for Defendant
Risk Management Alternatives, Inc.
7 Times Square
New York, New York 10036-7311
Tel.: (212) 297-5800
Fax: (212) 682-3485

By: 
LISA MARTINEZ WOLMART (LW 6656)
A Member of the Firm

DATED: March 11, 2005

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS

JANET FASHAKIN

Plaintiff(s)

- against -

RISK MANAGEMENT ALTERNATIVE and
NEXTEL COMMUNICATIONS

Defendants

INDEX NO:

Date purchased

Plaintiff(s) designate(s)

County as the place of trial.

SUMMONS With Notice

The basis of the venue is
Plaintiff reside at
105-22 Jamaica Avenue
Richmond Hill, NY 11418

To the above named Defendants

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within the days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Jamaica, New York
January 31, 2005


Janet Fashakin, Esq.
Plaintiff Pro Se
105-22 Jamaica Avenue
Richmond Hill, NY 11418
(718)-805-2522

Defendants' addresses:

Risk Management Alternative
2675 Breckinridge Boulevard
Duluth, GA 30096
(800) 735-5444

Nextel Communications
2001 Edmund Halley Drive
Reston, VA 20191

NOTICE: The nature of this action is Pecuniary and economic loss due to unfair debt collection practices in causing and continuing to cause damage to plaintiff's credit report despite a request to desist. Plaintiff is free from any culpable conduct.

Relief Sought is: \$25,000.00

Upon your failure to appear, judgment will be taken against you by default in the sum of \$25,000.00 with interest from the occurrence date.



JANET FASHAKIN, ESQ.
Plaintiff Pro-Se
105-22 Jamaica Avenue
Richmond Hill, NY 11418
(718) 805-2522

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

JANET FASHAKIN,

Plaintiff,

v.

RISK MANAGEMENT ALTERNATIVE
and NEXTEL COMMUNICATIONS,

Defendants.

Case No.

JOINDER IN REMOVAL

Defendant Nextel Communications, Inc. ("Nextel") hereby joins in the Notice of Removal of defendant Risk Management Alternatives, Inc. (improperly identified as Risk Management Alternative) ("RMA") to remove this action to this Court as fully as if it had executed the Notice jointly with RMA.

Defendant Nextel fully consents to the removal of this action.

Defendant Nextel received the Summons with Notice on March 1, 2005 from Pitney Hardin LLP via facsimile. Prior to receiving the documents from Pitney Hardin LLP, Nextel had no notice of the filing.

Nextel Communications, Inc.
2001 Edmund Halley Drive
Reston, Virginia 20191

By: 

Kirk Salzman

DATED: March 10, 2005

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS

JANET FASHAKIN,

Plaintiff,

v.

RISK MANAGEMENT ALTERNATIVE and
NEXTEL COMMUNICATIONS,

Defendants.

INDEX NO. 0011075
Civil Action

**NOTICE OF FILING OF NOTICE OF
REMOVAL**

To: Clerk
Civil Court of the City of New York
County of Queens
89-17 Sutphin Boulevard
Jamaica, New York 11435

Nextel Communications, Inc.
Kirk Salzmman, Esq.
2001 Edmund Halley Drive
Reston, Virginia 20191

Janet Fashakin, Esq.
105-22 Jamaica Avenue
Richmond Hill, New York 11418

PLEASE TAKE NOTICE that Defendant Risk Management Alternatives, Inc. has, on the 11th day of March, 2005, filed its Notice of Removal, a copy of which is attached hereto as Exhibit A, in the office of the Clerk of the United States District Court for the Eastern District Court of New York.

You are also advised that Risk Management Alternatives, Inc. has filed a copy of this Notice of Filing of Notice of Removal, with a copy of the Notice of Removal attached, with

the Clerk of the Civil Court of the City of New York, County of Queens, in accordance with 28 U.S.C. § 1446(d).

Dated: March 11, 2005

PITNEY HARDIN LLP
Attorneys for Defendant
Risk Management Alternatives, Inc.
7 Times Square
New York, New York 10036-7311
Tel.: (212) 297-5800
Fax: (212) 682-3485


By: 
LISA MARTINEZ WOLMART (LW 6656)
A Member of the Firm

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

JANET FASHAKIN,

Plaintiff,

v.

RISK MANAGEMENT ALTERNATIVE
and NEXTEL COMMUNICATIONS,

Defendants.

Case No.

NOTICE OF REMOVAL

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1. By Summons with Notice dated January 31, 2005, Janet Fashakin commenced an action in the Civil Court of the City of New York, County of Queens, bearing Index No. 0011075, against defendants RMA and Nextel Communications, Inc. ("Nextel"), entitled *Janet Fashakin v. Risk Management Alternative and Nextel Communications*. A true and correct copy of the Summons with Notice is attached hereto as Exhibit A.

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(federal jurisdiction may be inferred from the facts plead in the complaint); *New York State Waterways Ass'n, Inc. v. Diamond*, 469 F.2d 419, 421 (2d Cir. 1972) (the court must read the complaint liberally to determine whether the facts set forth justify subject matter jurisdiction on grounds other than those most artistically pleaded); *Empire HealthChoice Assur., Inc. v. McVeigh*, 396 F.3d 136, 140 (2d Cir. 2005) (the district court has subject matter jurisdiction where it determines that the substance of the plaintiff's allegations raises a federal question). Similarly, by asserting that the claim arises from alleged "credit report[ing]" by RMA, Plaintiff asserts a federal claim under the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*

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5. Nextel had no notice of the filing until our office supplied the Summons with Notice to Nextel via facsimile on March 1, 2005. According to Plaintiff's Affidavit of Service, Plaintiff's representative placed the Summons with Notice, addressed to Nextel, in the mail on February 7, 2005. See Defendant Nextel's Joinder in Removal, attached hereto as Exhibit B.

6. Defendant Nextel by and through its counsel, Kirk Salzmann, Esq., has consented to RMA's removal of this action. See Exhibit B.

7. Contemporaneously with this filing, RMA has served copies of this Notice of Removal upon plaintiff Janet Fashakin, defendant Nextel and the Clerk of the Civil Court of the City of New York, County of Queens. A true and correct copy of the Notice of Filing of Notice of Removal filed in Civil Court of the City of New York, County of Queens is attached hereto as Exhibit C and incorporated herein.

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PITNEY HARDIN LLP
Attorneys for Defendant
Risk Management Alternatives, Inc.
7 Times Square
New York, New York 10036-7311
Tel.: (212) 297-5800
Fax: (212) 682-3485

By: 
LISA MARTINEZ WOLMART (LW 6656)
A Member of the Firm

DATED: March 11, 2005

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

JANET FASHAKIN,

Plaintiff,

v.

RISK MANAGEMENT ALTERNATIVE
and NEXTEL COMMUNICATIONS,

Defendants.

Case No.

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

JONATHAN M. BORG, being duly sworn, according to law, upon his oath,
deposes and says:

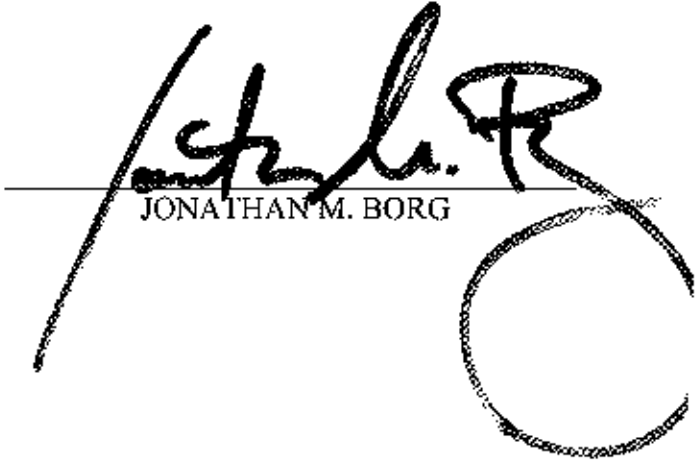
1. I am an attorney-at-law of the State of New York, and I am associated with
the firm Pitney Hardin LLP, attorneys for the defendant Risk Management Alternatives, Inc.

2. I am not a party to this action and am over eighteen years of age.

3. On March 11, 2005, I forwarded a true and correct copy of the Notice of
Removal, by first class mail, postage prepaid to:

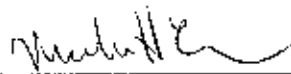
Nextel Communications, Inc.
Kirk Salzmann, Esq.
2001 Edmund Halley Drive
Reston, Virginia 20191
Attorney for Defendant
Nextel Communications, Inc.

Janet Fashakin, Esq.
105-22 Jamaica Avenue
Richmond Hill, New York 11418
Plaintiff, Pro se



JONATHAN M. BORG

Sworn and subscribed to before me
this 11th day of March, 2005.



Notary Public

MICHAEL H. LEVISON
Notary Public, State of New York
No. 02LE6078538
Qualified in New York County
Commission Expires August 5, 2008

EXHIBIT A

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS

JANET FASHAKIN

Plaintiff(s)

- against -

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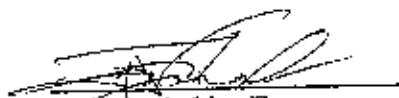
SUMMONS With Notice

The basis of the venue is
Plaintiff reside at
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To the above named Defendants

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within the days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Jamaica, New York
January 31, 2005


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Plaintiff Pro Se
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Plaintiff Pro-Se
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(718) 805-2522

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

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Nextel Communications, Inc.
2001 Edmund Halley Drive
Reston, Virginia 20191

By: 

Kirk Salzmann

DATED: March 10, 2005

EXHIBIT C

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS

JANET FASHAKIN,

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RISK MANAGEMENT ALTERNATIVE and
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Civil Action

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Kirk Salzmann, Esq.
2001 Edmund Halley Drive
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105-22 Jamaica Avenue
Richmond Hill, New York 11418

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Dated: March 11, 2005

PITNEY HARDIN LLP
Attorneys for Defendant
Risk Management Alternatives, Inc.
7 Times Square
New York, New York 10036-7311
Tel.: (212) 297-5800
Fax: (212) 682-3485

By:



LISA MARTINEZ WOLMART (LW 6656)
A Member of the Firm